DATE: September 14, 1998

CASE NO: 97-INA-136

In the Matter of

GOLDEN STATE FINANCE AND LOAN
Employer

on behalf of

MARIA T. SAN JUAN
Alien

Appearances: Dan E. Korenberg, Esq.,
Attorney for Employer and Alien

Before: Holmes, Jarvis, and Vittone
Administrative Law Judges

DONALD B. JARVIS
Administrative Law Judge

DECISION AND ORDER

This case arises from Golden State Finance and Loan's ("Employer") request for review of the denial by a U.S. Department of Labor Certifying Officer ("CO") of an application for alien labor certification. The certification of aliens for permanent employment is governed by section 212(a)(5)(A) of the Immigration and Nationality Act, 8 U.S.C. §1182(a)(5)(A), and Title 20, Part 656 of the Code of Federal Regulations ("C.F.R."). Unless otherwise noted, all regulations cited in this decision are in Title 20.

Under §212(a)(5) of the Act, as amended, an alien seeking to enter the United States for the purpose of performing skilled or unskilled labor is ineligible to receive labor certification unless the Secretary of Labor has determined and certified to the Secretary of State and Attorney General that, at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work: (1) there are not sufficient workers in the United States who are able, willing, qualified, and available; and (2) the employment of the alien will not adversely affect the wages and working conditions of the United States workers similarly employed.

An employer who desires to employ an alien on a permanent basis must demonstrate that the requirements of 20 C.F.R. Part 656 have been met. These requirements include the responsibility of the employer to recruit U.S. workers at the prevailing wage and under prevailing working conditions through the public employment service and by other means in order to make a good faith test of U.S. worker availability.

We base our decision on the record upon which the CO denied certification and the Employer's request for review, as contained in the appeal file ("AF"), and any written arguments. 20 C.F.R. §656.27(c).

Statement of the Case

On January 18, 1994, the Employer filed a Form ETA 750 Application for Alien Employment Certification with the California Employment Development Department ("EDD") on behalf of the Alien, Maria T. San Juan. (AF 55-56). The job opportunity was listed as "Accountant". The job duties were described as follows:

> Direct implementation of a general accounting system for keeping accounts and records of disbursements, expenses, tax payments, assets and income collection into the general ledgers. Prepare monthly profit and loss statements and balance sheets to reflect company's assets, liabilities and capital. Maintain payroll records. Responsible for timely and accurate filing of quarterly and annual tax returns and tax-related papers; Perform internal auditing of company financial records and prepare schedules and reports. Assist management in formulating and updating of budget, and perform comparison with actual figures and variance analysis; Responsible for updating/maintaining accounts receivables and payables and for making payments to suppliers and collections from debtors.

(AF 55). The stated job requirements for the position, as set forth on the application, included a Bachelor of Science degree in Business Administration or Accounting and 5 years experience in the job offered. Special requirements included the ability to operate Lotus 1,2,3, WordStar, Display Write and 10 Key by touch. A test would be given to verify the job requirements.[1] Id.

EDD referred sixteen applicants to the Employer. (AF 66). According to the Employer's Results of Recruitment Report, none of the applicants was hired. The Employer was unable to contact the six applicants referred by EDD's job match system because EDD did not furnish any phone numbers or addresses. Of the remaining ten applicants, the Employer contacted nine of them

[1]The Employer submitted a copy of the test which consisted of 15 multiple choice questions and a quantitative problem. (AF 170-175). According to the Employer, a passing score is 65% and above. (AF 66).

by telephone to schedule an interview.[2] Seven applicants indicated that they were not interested in the position.[3] During the telephone contact, the Employer determined that applicant Liao was not qualified for the position. Applicant Ignacio failed the accounting test. (AF 66-67). EDD transmitted the file to the CO. (AF 54).

The CO issued a Notice of Findings ("NOF") on June 19, 1995, proposing to deny the certification for four reasons. (AF 48-53). First, the Employer's test is an unduly restrictive job requirement in violation of Section 656.21(b)(2)(i)(A). The CO found that there is no evidence that the test is an objective measure of an applicant's ability to perform the stated job duties and there is no indication that such a test is normal for the industry. (AF 49). Second, the job to be performed involves a combination of job duties in violation of Section 656.21(b)(2)(ii). The CO found that the Employer combined the job duties for an Accountant and an Auditor. (AF 50). Third, the CO found that the Employer rejected applicants Liao, Ignacio, and Hibbert for non lawful job-related reasons. (AF 51). Fourth, the CO found that the Employer did not recruit in good faith. The CO found that the Employer failed to contact applicants Hakimi, Kakavand[4], Lien, Dave, Gantan, Languell, and Randhava in a timely manner. (AF 52).

The Employer submitted its rebuttal dated August 22, 1995, and August 23, 1995. (AF 43). The Employer argued that the exam is not an unduly restrictive requirement because it tests the basic requirements of the job. The Employer also argued that the job description does not involve a combination of job duties. The Employer rejected Ignacio because he failed the test with a score of 11% correct. The Employer rejected Liao because he had only three years and nine months experience rather than the required five years of experience as an accountant. The Employer also argued that it contacted the other applicants in a timely manner. In addition, the Employer submitted an affidavit from its Chief Executive Officer, Helen Famer, describing her efforts to contact the applicants. (AF 42-43). The Employer also submitted copies of its telephone bills for November and December 1994. (AF 46-47).

The Employer also submitted an affidavit from Jeffrey D. Cronin, a certified public accountant at the public accounting firm of Gumbiner, Savett, Finkel, Fingleson & Rose, Inc. He assessed the accounting test developed by the Employer. In his professional opinion, the test is materially relevant to the job duties for the accounting position with the Employer. Mr. Cronin also stated that the test was a fair one, and could be used to test the level of accounting knowledge that someone with a bachelor's degree should have. (AF 41).

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[2]The Employer did not contact applicant Hibbert because he lacked the required degree and experience. (AF 67).

[3]Most of the applicants were no longer interested in the position because the Employer was not offering any benefits. (AF 67).

[4]The CO referred to Kakavand as "Kakauni." (AF 52).

The CO issued a second NOF on December 14, 1995, proposing to deny certification. Regarding whether the test is an unduly restrictive job requirement, the CO found that Mr. Cronin was not a disinterested expert. The CO stated: "The CPA who gave the opinion is known to be a partner with immigration attorneys one block from your office. Such a close association could not be called disinterested." (AF 29). The CO also found that the Employer failed to establish that such a test is normal in the industry. The CO found that the Employer failed to document that the combination of job duties is normal to the occupation. The CO found that the Employer failed to consider the total backgrounds of applicants Liao and Ignacio. The Employer should have considered Liao's master degree in determining whether he was qualified for the position. (Id.). Regarding the timely contact issue, the CO found that all of the Employer's calls were under one minute of length and all took place two weeks or more after EDD sent the resumes. (AF 29-30).

The Employer submitted its rebuttal dated January 12, 1996. (AF 19-27). The Employer stated that this is the first time that the Employer has needed to hire an accountant. The test is necessary to insure that the applicants have the basic knowledge and experience to handle the job duties. (AF 27).

The CO issued a Final Determination ("FD") on March 27, 1996, denying certification. (AF 16-18). The CO found that the test requirement is unduly restrictive. (AF 17). The CO found that the combination of job duties is unduly restrictive. (Id.). The CO found that the Employer rejected applicants Liao and Ignacio for non lawful job-related reasons. (Id.). The CO also found that the Employer failed to contact applicants Hakimi, Lien, Gantan, Languell, and Randhava in a timely manner. (AF 18).

On April 29, 1996, the Employer filed a timely Request for Review. (AF 1-15).

Discussion

As an initial matter, the Employer argues that the Final Determination ("FD") was defective because it failed to specify the sections or subsections of law that the denial was based on.

Section 656.25(g)(2) requires that the FD form shall:

1) contain the date of the determination;
2) state the reasons for the determination;
3) quote the request for review procedures;
4) advise that if a request for review is not made within the specified time, the denial will become the final determination of the Secretary.

The CO must identify the section or subsection of the regulations the Employer violated. *Flemah, Inc.*, 88-INA-62 (Feb. 21, 1989) (*en banc*).

Here, the Employer is correct that the CO, in the FD, failed to cite to the sections of the regulations in support of the denial. However, the Employer's concern is misplaced. The FD does

reference the original NOF which does identify the actual sections that the Employer violated. Since the first NOF clearly identifies the sections violated, the Employer cannot argue that it did not understand what violation had been alleged. As such, the CO did comply with the Board's holding in *Flemah*.

Regarding the substantive issues, the CO found that the Employer's requirement that applicants pass an accounting test was unduly restrictive. As such, the CO required the Employer to either establish a business necessity for the test or document that such a test was a normal job requirement for the industry. (AF 49). The CO also found that the Employer's rejection of applicant Ignacio for failing the test was a non lawful job-related reason. (AF 51). Rather than establish a business necessity or establish that the test was a normal job requirement, the Employer argued that the test was not an unduly restrictive job requirement. (AF 31-32).

An employer may use a test or questionnaire to ascertain the extent of an applicant's claimed experience. *South of France Restaurant*, 89-INA-68 (Mar. 26, 1990). An employer may reject an applicant who fails a test or questionnaire designed to determine whether the applicant has the proper experience for the job. *MITCO*, 90-INA-295 (Sept. 11, 1991). The Board in *Lee & Family Leather Fashions, Inc.*, 93-INA-50 (Dec. 21, 1994) stated that:

> [A] pre-employment test designed to aid an employer in the subjective determination of whether an applicant is able to perform the core job duties, ... may be a valid interview tool. However, such a subjective determination, because of its potential for abuse, is suspect and must be supported by specific facts which are sufficient to provide an objective, detailed basis for concluding that the applicant could not perform the core job duties. A subjective reason for rejecting a U.S. applicant is not necessarily unlawful — it is the failure to document how the interviewer came to that subjective conclusion that makes subjective reasons for rejection objectionable.

Here, the Employer argues that this was an objective test designed to determine whether the applicants had the necessary knowledge and experience required for the position. The Employer relies on *A to Z Vending Services Corp.*, 91-INA-14 (Jan. 29, 1993), *Hugh G. Brewster, Inc.*, 88-INA-390 (Dec. 6, 1989), and *Allied Towing Service*, 88-INA-46 (Jan. 9, 1989), for the proposition that such an objective test is not an unduly restrictive job requirement. (AF 3-6, 19-20, 31-32).

We agree with the Employer that the accounting test is not an unduly restrictive requirement. This is not a case where the Employer was using a subjective test to eliminate qualified applicants. The test was stated in the job advertisement. (AF 147-149). It was an objective test designed to ascertain whether the applicants could perform the stated job duties which the CO never challenged. The Employer provided an expert opinion from a C.P.A. who indicated that this was a fair test designed to ascertain an applicant's accounting experience. (AF 41). The CO dismissed the expert's opinion because he was not a disinterested expert. The CO found that the expert works with

immigration attorneys.[5] (AF 17, 29). Based on the record, the CO's concerns are speculative at best. And, even if true, they are completely inappropriate. While the weight that a CO must give to an expert's opinion may vary based on many factors, including but not limited to, the expert's qualifications, background, reasoning, and relationship to the parties, a CO may not summarily reject an expert's opinion merely because he has a working relationship with immigration attorneys.[6] In sum, the accounting test was a reasonably objective tool for the Employer to assess the applicants qualifications. *See, e.g., Pattern Knitting Mills, Inc.*, 95-INA-109 (Dec. 2, 1996) (Accounting test is not an unduly restrictive requirement.); *Commercial Property Management*, 93-INA-163 (Aug. 25, 1994) (Panel found objective accounting test to be reasonable.)

We also agree with the Employer that it lawfully rejected applicant Ignacio for failing the accounting test. Ignacio answered four out of fifteen multiple choice questions correctly and received zero points on the quantitative problem for an 11% score. Ignacio's 11% score is far below the Employer's requirement of 65%.[7] (AF 66). We also note that Ignacio's college degree is from the Philippines. (AF 129).

The CO also found that the job description encompassed a combination of job duties of the positions Accountant and Internal Auditor. The Employer argues that the job duties pertain only to an Accountant. (AF 6-8, 21, 32-33). The CO found that the duties of "internal auditor" are not found in the Dictionary of Job Titles ("DOT") definition of Accountant and that "it appears to be contrary to generally accepted accounting practices to have an accountant audit his/her own books. (AF 50).

Under Section 656.21(b)(2)(ii), a combination of job duties is presumed to be an unduly restrictive requirement. The CO must look to the correct DOT job title - if there is one- to ascertain

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[5]In the FD, the CO for the first time stated that he would accept the expert's opinion if it had been sanctioned by an independent body such as the California Board of Accountancy. (AF 17). Informing the Employer for the first time in the FD as to what evidence the CO will accept, deprives the Employer the opportunity to cure or rebut the deficiency. *Downey Orthopedic Medical Group*, 87-INA-674 (Mar. 14, 1988) (*en banc*).

[6]Likewise, an opinion by the Employer must be given the weight that it rationally deserves. *Gencorp.*, 87-INA-659 (Jan. 13, 1988) (*en banc*).

[7]The Alien passed the same test with a 100% correct score. (AF 170-179). While it may seem suspicious that the Alien received a perfect score, there is no evidence in the record of any testing inconsistencies. The Alien's handwritten work and notes were included. Id. The Alien's high score may support the expert's opinion that this was a fair and reasonable test, while Ignacio's score may simply reflect his deficiencies. We might reach an opposite result in a case where there are inconsistencies in the Alien's test results or where there is a wide gulf between the Alien's score and several U.S. applicants' scores. *See, e.g., Interserve Group*, 97-INA-200 (Mar. 4, 1998).

a position's customary duties. *LDS Hospital*, 87-IN-558 (Apr. 11, 1989). If an employer's job description lists duties that do not appear in any single DOT job description, then the proposed position requires a combination of duties. *H.Stern Jewelers, Inc.*, 88-IN-421 (May 23, 1990). If the required duties do appear under a single DOT job heading, or are related to or consistent with the job duties in the DOT, then the duties do not constitute a combination of duties. *Robert L. Lippert Theatres*, 88-IN-433 (May 30, 1990). The DOT is merely a guideline and should not be applied mechanically. *Promex Corporation*, 89-IN-331 (Sept. 12, 1990). The DOT should not be applied in a pigeonhole fashion where there must be a complete matching of duties between the job offered and the DOT classification in order for a job to be appropriately classified. Merely because the duties of the job offered require some, but not all, of the duties included in a particular DOT classification does not nullify the applicability of that classification. *Trilectron Industries, Inc.*, 90-IN-188 (Dec. 19, 1991).

After carefully reviewing the DOT job descriptions for an Accountant (DOT 160.162-018) and Internal Auditor (DOT 160.167-054), we agree with the Employer that the job duties only involve the position of an Accountant and are not a combination of duties. While the Employer does list the job duty of: "Perform internal auditing of company financial records and prepare schedules and reports," it does not appear that this duty matches the DOT description of an Internal Auditor. (AF 55). Webster's II New Riverside University Dictionary (2d. Ed. 1988) defines an audit as "an examination of records or accounts to check their accuracy." Instead, we believe that the internal auditing duty listed by the Employer is encompassed in the DOT description for an Accountant. For example, an Accountant "Audits contracts, orders, and vouchers, and prepares reports to substantiate individual transactions prior to settlement....May establish, modify, document, and coordinate implementation of accounting and accounting control procedures." (DOT 160.162-018). It is reasonable that an Accountant, while analyzing financial documents and preparing reports, would examine the financial records to check their accuracy. The CO's interpretation of an Accountant's job duties is too narrow.

Next, the CO denied certification because the Employer rejected applicant Liao for non lawful job-related reasons. The CO found that the Employer should have considered Liao's Master degree when determining whether Liao had the required five years of experience as an accountant. (AF 18, 29).

Section 656.21(b)(6) provides that if U.S. workers have applied for the job opportunity, an employer must document that they were rejected solely for lawful job-related reasons. In general, an applicant is considered qualified for a job if he or she meets the minimum requirements specified for that job in the labor certification application. *United Parcel Service*, 90-IN-90 (Mar. 28, 1991). Section 656.24(b)(2)(ii) provides that the Certifying Officer shall consider a U.S. worker able and qualified for the job opportunity if the worker by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers. Where the U.S. applicant clearly does not meet a stated job requirement, the burden shifts to the CO to explain adequately why the U.S. applicant is

qualified through a combination of education, training or experience. *Houston Music Institute, Inc.*, 90-IN-450 (Feb. 21, 1991).

Here, the Employer stated that applicant Liao had only 3 years and 9 months experience as an accountant, while the Employer required 5 years of experience.[8] (AF 34). The CO never challenged the 5 year requirement and never disputed the Employer's calculation of Liao's experience. Instead, the CO found that Lao's masters degree qualified him for the position. The CO never explained how the masters degree made up for Lao's deficiency in work experience. The CO may not substitute, after the fact, his own judgment for the Employer's job requirements when a U.S. applicant does not meet an unchallenged job requirement. *Aduki Leather Goods,* 95-IN-187 (Mar. 14, 1997). And, even if the Employer should have considered the masters degree, Lao's experience would still fall short of the 5 year requirement. Since a 4 year college degree is equivalent to 2 years of experience, then a masters degree which typically requires 2 years of study to complete, would be equivalent to 1 year of experience. *Cf. Susie Hansen Band,* 94-IN-402 (Aug. 22, 1995); *Garland Community Hospital*, 89-IN-217 (June 20, 1991). As such, Lao would only have 4 years and 9 months of experience. In sum, we find that the Employer properly rejected applicant Lao because he lacked 5 years of experience as an accountant.

Finally, the CO denied certification because the Employer failed to recruit in good faith. The CO found that the Employer did not contact the U.S. applicants in a timely manner. (AF 18, 52).

There is an implicit requirement that employers engage in a good faith effort to recruit qualified U.S. workers. *Daniel Caustic,* 94-IN-541 (Feb 23, 1996); *H.C. LaMarch Ent., Inc.*, 87-IN-607 (Oct. 27, 1988). Actions by an employer which indicate a lack of good faith recruitment effort, or actions which prevent qualified U.S. workers from further pursuing their applications, are a basis for denying certification. In such circumstances, an employer has not proven that there are not sufficient U.S. workers who are able, willing, qualified and available to perform the work as required under Section 656.1.

An employer must contact potentially qualified U.S. applicants as soon as possible after it receives resumes or applications, so that the applicants will know that the job is clearly open to them. *Loma Linda Foods, Inc.*, 89-IN-289 (Nov. 26, 1991) (*en banc*). There is no per se time cut off as to when an Employer's contact efforts are unreasonable. Factors to consider include, but are not limited to, the following: number of resumes and applicants to contact, the amount of experience or education required for the position, whether the position is local or non local, whether the recruitment period occurs during the holiday season, and any reasonable justifications for the delay offered by the Employer. *Id*. In general, delays over 4 weeks without a reasonable justification are untimely. *See, e.g., King Ice Enterprises, Ltd.*, 90-IN-214 (Sept. 12, 1991); *Hydromach*, 89-IN-329 (Aug. 15, 1990); *The Velvet Turtle,* 89-IN-57 (May 29, 1990); *Benjamin Builders, Inc.*, 89-IN-69 (Mar. 15,

[8]The Employer's determination that Liao had 3 years and 9 months of experience as an accountant appears to be generous since Lao's resume does not list any accountant positions. (AF 116).

1990); *Trussway-Fort Worth*, 88-IN-163 (Mar. 12, 1990). In contrast, a two to three week delay in contacting applicants may be timely. *See, e.g.*, *Lee & Chiu Design Group*, 88-IN-328 (Dec. 20, 1988) (*en banc*); *National Industries for the Severely Handicapped, Inc.*, 88-IN-388 (Feb. 13, 1990); *Fair Weather Marine, Inc.*, 88-IN-331 (Sept. 21, 1989); *Dai West, Inc.*, 88-IN-443 (Sept. 8, 1989); *Hoover Electric Co.*, 88-IN-315 (June 6, 1989).

Here, the CO found that the Employer waited 2 weeks or more before contacting applicants Hakimi, Kakavand, Lien, Gantan, and Languell, and waited 3 weeks to contact applicant Randhava.[9] The CO also found that all of the telephone contact calls were under one minute in length. (AF 29-30). The CO's findings are not entirely accurate. EDD forwarded the resumes of applicants Hakimi, Lien, Fantan, and Lingual on November 10, 1994. The Employer contacted each of these applicants by telephone on November 23; 13 days after EDD sent the resumes.[10] There is no record in the file as to when EDD forwarded Kakavand's resume. The Employer contacted Kakavand on November 25. (AF 34-36). At the earliest, EDD forwarded the resume to the Employer on November 10, in which case the Employer's contact was 15 days later.[11] The phone bills that the Employer submitted show that many of the phone calls were over one minute in length - three were over 10 minutes in length. (AF 46-47).

In *Kellogg Supply, Inc.*, 93-INA-172 (May 11, 1994), the panel held that the Employer's 18 day delay in contacting the applicants for an accounting manager position was not untimely. The facts here are similar to those in *Kellogg Supply*. While, the Employer did not contact applicant Randhava until 23 days after EDD forwarded the resumes, some of the delay may be attributed to the Thanksgiving holiday period.[12] The Employer received 10 resumes from EDD and contacted 9

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[9]In the first NOF, the CO also found that the Employer never contacted applicant Fantan, and found that applicants Dave and Lingual stated that they never indicated that they were no longer interested in the position. (AF 52). However, the FD does not dispute the Employer's contact of Dave; therefore, we must assume that the CO accepted the Employer's rebuttal regarding Dave. *Barbara Harris*, 88-IN-392 (Apr. 5, 1989). Likewise, neither the second NO nor the FD address the Employer's rebuttal that it did contact applicant Fantan and that applicant Lingual was not interested in the position; therefore, we must assume that the CO accepted the Employer's rebuttal regarding these issues. *Id*.

[10]Actually, the Employer probably had less than 13 days to contact the applicants since the Employer would not have received the resumes by mail until after November 10, and several of the potential contact days fall on the weekend.

[11]According to the CO, EDD forwarded resumes to the Employer on November 10, 22, and December 9. (AF 52).

[12]EDD forwarded Randhava's resume to the Employer on November 22, and the Employer contacted Randhava on December 15. (AF 35).

applicants. The Employer contacted almost all of the applicants in question within 13 days. Under the circumstances of this case, we find that the Employer timely contacted the applicants.

In conclusion, we find that the CO's denial of certification should be reversed. The accounting test is not an unduly restrictive job requirement. The Employer did not require a combination of job duties. The Employer did not reject U.S. applicants for non lawful job-related reasons. And, the Employer contacted the applicants in a timely manner.

Order

The Final Determination denying certification is hereby **REVERSED**, and the Certifying Officer is directed to **GRANT** certification.

For the Panel:

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DONALD B. JARVIS
Administrative Law Judge

San Francisco, California

Judge John C. Holmes, dissenting. I respectfully, but firmly dissent. While I agree with the majority that the CO has not always been clear in giving his rationale for denial in every instance, the case would appear to be most classic in presenting all the reasons for denial of labor certification. As a starting point 17 applicants were referred to Employer. Additional skepticism should be shown when the Employer declared this is the first time the job has been offered, since he (owner/founder) had

formerly done the company's accounting. (AF-27). At least two, and probably more applicants were turned down because no benefits were offered. It stretches credulity beyond normal limits to believe that a legitimate business enterprise would offer a near $40,000.00 accountant job with no benefits. By way of contrast, Employer insisted on giving a pre-employment test, in which alien scored very well, whereas applicant Ignacio an experienced accountant, scored an ignominious 11% (AF-66). Follow-up questionnaires demonstrated additional questionable reasons for rejection of applicants. For example, applicant Lao had an MBA plus 3.9 years accounting experience but was not even interviewed. (AF-114). Employer's reason for rejection of applicant Plueger was that there was no address given, yet Mr. Plueger gave his address and telephone number on his resume (AF-107). Many of the other applicants were merely interviewed by phone and the reasons given by Employer for rejection at variance with the follow-ups (see, for example, Dave-AF-136; Hilbert-AF-128). Moreover, it seems evident from Employer's rebuttal that he is more interested in finding bases for rejection of applicants without personal interview rather than conscientiously attempting to fulfill the alleged job opportunity. To reverse the CO's Final Determination appears to me to require unwarranted acceptance of each and every of Employer's numerous "explanations" and rejection of all the reasons given by applicants. It would appear to set a bad precedent that, in effect, shifts the burden from Employer to the CO in determining whether or not labor certification should be granted. While "bad faith" cannot be presumed of an Employer, the record evidence here appears to strongly support the proposition that Employer has throughout the labor certification process demonstrated that it was really interested only in alien in fulfilling the job oppoturnity. I dissent.